

Remarks

The Office Action mailed October 18, 2006, and made final, has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-4, 7-11, 14, and 15 are now pending in this application. Claims 1-4, 7-11, 14, and 15 stand rejected.

The rejection of Claims 1, 2, 7-9, 14, and 15 under 35 U.S.C. § 103(a) as being anticipated by Wolpa (U.S. Patent 5,992,073) in view of Siebe (U.S. Patent 1,761,995) is respectfully traversed.

Wolpa describes an identification device (10) that is coupled to an exterior surface (16) of a storage container (15). Identification device (10) includes a label holder (20), a label engagement means (30), a label means (40), and an attachment means (50). Label holder (20) includes a box frame (22) having a slot entrance aperture (34) sized to receive the label means (40) therein. Box frame (22) is substantially three-dimensionally rectangular, such that the exterior wall (24) of frame (22) is substantially parallel to the interior wall of frame (22). Identification device (10) is attached to the exterior surface (16) of the storage container (15) by a strap (52) or through the use of an adhesive bonding (54). Notably, Wolpa does not describe or suggest a tag holder coupled to a fastener mechanism using an attachment mechanism having first portion coupled to and extending substantially across a length of the tag holder.

Siebe describes a price tag holder including a frame (1), formed of a sheet of metal plate (2). The holder is fabricated such that the bottom and end edges are folded to permit removal and replacement of a price card (5). The holder further includes a body plate (2) having tongues (6, 7, 8) that are bent back on a rear side of the plate (2) to engage a wire (9). Wire (9) encloses an article of merchandise to attach frame (1) thereon. Notably, tongues (6, 7, 8) do not extend substantially across a length of frame (1). As such, Siebe does not describe nor suggest a tag holder coupled to a fastener mechanism using an attachment mechanism having first portion coupled to and extending substantially across a length of the tag holder.

Claim 1 recites a container identification system comprising “a fastener mechanism configured to extend for a length at least partially around an outer perimeter of a container . . . a tag holder coupled to said fastener mechanism and comprising an outer surface and an inner surface, said inner surface defining a cavity within said tag holder, said cavity having a circumferential length that is less than the length of said fastener mechanism, said cavity sized to receive indicia therein for identifying the container . . . an attachment mechanism having a first portion coupled to and extending substantially across a length of said tag holder and a second portion coupled to said fastener mechanism and configured to couple to said attachment mechanism first portion, such that said tag holder is coupled to said fastener mechanism.”

Neither Wolpa nor Siebe, considered alone or in combination, describe nor suggest a container identification system as is recited in Claim 1. Specifically, neither Wolpa nor Siebe, considered alone or in combination, describe nor suggest a container identification system including a tag holder coupled to a fastener mechanism using an attachment mechanism having first portion coupled to and extending substantially across a length of the tag holder. Rather, in contrast to the present invention, Wolpa describes an identification device having a strap or an adhesive bond that is coupled directly thereto; and Siebe describes an attachment mechanism that includes three tongues extending only partially across a frame. Accordingly, Claim 1 is submitted to be patentable over Wolpa in view of Siebe.

Claims 2, 7, and 8 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 2, 7, and 8 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 2, 7, and 8 likewise are patentable over Wolpa in view of Siebe.

Claim 9 recites a method of identifying a container, wherein the method comprises “coupling a tag holder to a fastener mechanism using an attachment mechanism to facilitate forming a container identification system, wherein the attachment mechanism includes a first portion coupled to and extending substantially across a length of the tag holder and a second portion coupled to the fastener mechanism and configured to couple to the first portion . . . coupling the container identification system to a container, such that the fastener mechanism extends for a length at least partially around an outer perimeter of the container, and wherein the tag holder has a circumferential length that is shorter than the length of the fastening

mechanism . . . coupling an identification tag to the tag holder that facilitates identifying the container.”

Neither Wolpa nor Siebe, considered alone or in combination, describe nor suggest a method of identifying a container as is recited in Claim 9. Specifically, neither Wolpa nor Siebe, considered alone or in combination, describe nor suggest a method including coupling a tag holder to a fastener mechanism using an attachment mechanism that includes a first portion coupled to and extending substantially across a length of the tag holder. Rather, in contrast to the present invention, Wolpa describes an identification device having a strap or an adhesive bond that is coupled directly thereto; and Siebe describes an attachment mechanism that includes three tongues extending only partially across a frame. Accordingly, Claim 9 is submitted to be patentable over Wolpa in view of Siebe.

Claims 14 and 15 depend, directly or indirectly, from independent Claim 9. When the recitations of Claims 14 and 15 are considered in combination with the recitations of Claim 9, Applicant submits that dependent Claims 14 and 15 likewise are patentable over Wolpa in view of Siebe.

For at least the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 1, 2, 7-9, 14, and 15 be withdrawn.

The rejection of Claims 3, 4, 10, and 11 under 35 U.S.C § 103 as being unpatentable over Wolpa in view of Siebe and further in view of Siegrist (U.S. Patent 6,550,813) is respectfully traversed.

Wolpa and Siebe are described above. Siegrist describes a reusable identification tag (50) having a substantially flat substrate (51) that is adapted to receive graphics and indicia (52) thereon. Substrate (51) is covered with a top layer (53) fabricated from a non-porous erasable film. Tag (50) is attached to an item using a string or strap extended through a hole (54) near an outer perimeter of tag (50). Notably, Siegrist does not describe nor suggest a tag holder coupled to a fastener mechanism using an attachment mechanism having first portion coupled to and extending substantially across a length of the tag holder. As such, Siegrist does not make up for the deficiencies of Wolpa and Siebe.

Claims 3 and 4 depend from independent Claim 1, which is recited hereinabove. As stated above, neither Wolpa nor Siebe, considered alone or in combination, describe or suggest a container identification system as is recited in Claim 1. Moreover, Siegrist does not make up for the deficiencies of Wolpa and Siebe. Accordingly, Applicants respectfully submit that Claim 1 is patentable over Wolpa in view of Siebe and further in view of Siegrist.

Claims 3 and 4 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 3 and 4 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 3 and 4 likewise are patentable over Wolpa in view of Siebe and further in view of Siegrist.

Claims 10 and 11 depend from independent Claim 9, which is recited hereinabove. As stated above, neither Wolpa nor Siebe, considered alone or in combination, describe or suggest a method as is recited in Claim 9. Moreover, Siegrist does not make up for the deficiencies of Wolpa and Siebe. Accordingly, Applicants respectfully submit that Claim 9 is patentable over Wolpa in view of Siebe and further in view of Siegrist.

Claims 10 and 11 depend, directly or indirectly, from independent Claim 9. When the recitations of Claims 10 and 11 are considered in combination with the recitations of Claim 9, Applicant submits that dependent Claims 10 and 11 likewise are patentable over Wolpa in view of Siebe and further in view of Siegrist.

For at least the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 3, 4, 10, and 11 be withdrawn.

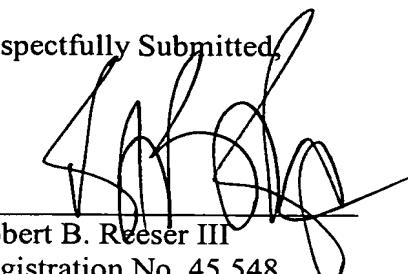
Moreover, Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Wolpa, Siebe, or Siegrist, considered alone or in combination, describe or suggest the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Wolpa, Siebe, and Siegrist because there is no motivation to combine the references suggested in the art. Additionally, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicants' own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levingood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). In the present case, neither a suggestion or motivation to combine the prior art disclosures, nor any reasonable expectation of success has been shown.

Furthermore, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching nor suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for these reasons, along with the reasons given above, Applicants request that the Section 103 rejections of the Claims be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in the application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,


Robert B. Reeser III
Registration No. 45,548
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070